

Remarks

Reconsideration and withdrawal of the rejections set forth in the Office action dated March 5, 2007 are respectfully requested. The applicant petitions the Commissioner for a 1-month extension of time: a separate petition accompanies this amendment.

I. Amendments

Claim 4 has been amended and claims 22, 23 and 24 are being newly added to break original claim 4 into four independent claims. Support for the amendment of claim 4 can be found at least on page 1, second paragraph; and page 5, last paragraph through the last paragraph of page 6 of the application as filed. Support for new claims 22-24 can be found in original claim 4, as well as throughout the specification, including at least at page 1, second paragraph; page 6, last three full paragraphs; and page 7, second full paragraph.

No new matter is added by way of these amendments.

II. Rejection under 35 U.S.C. §112, first paragraph

Claims 4-12 were rejected under 35 U.S.C. §112, first paragraph, because the specification allegedly does not enable any person skilled in the art to which it pertains, or with which it is most connected to make and use the invention commensurate in scope with the claims.

It is the Examiner's position that the specification enables the skilled artisan to strengthen learning ability and memory retention ability, but allegedly does not enable strengthening brain function (see Office action at pages 3, 5 and 6). The Examiner acknowledges that "(t)he disclosure of strengthening learning ability and memory retention ability by administering linoleic acid and  $\alpha$ -linolenic acid at various ratios of linoleic acid to  $\alpha$ -linolenic acid is adequate," but asserts that "(t)he guidance given by the specification as to strengthening brain function by administering linoleic acid and  $\alpha$ -linolenic at various ratios of linoleic acid to  $\alpha$ -linolenic acid is limited" (Office Action at page 5). While not acceding to the Office's assertion and in order to advance prosecution, the phrase "brain function" has been deleted from claim 4 (and does not

appear in new independent claims 22-24). Thus the rejection is believed to be made moot.

Accordingly, Applicants submit that the specification would enable any person skilled in the art to which it pertains to make and use the claimed method.

In light of the above, Applicants submit that the present claims satisfy the requirements of 35 U.S.C. §112, first paragraph and respectfully request that the rejection be withdrawn.

### III. Rejection under 35 U.S.C. §102

Claims 4-7 and 10 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 4,948,811 issued to Spinner *et al.* (hereinafter "Spinner") as evidenced by Rehkamper *et al.* (*Journal of Dairy Science*, 1998, 81:1574-1580, hereinafter " Rehkamper").

Applicants respectfully traverse this rejection.

#### A. The Present Claims

As embodied by independent claims 4 and 22-24, the claimed methods are directed to the administration of an unsaturated fatty acid composition comprising linoleic fatty acid (n-6, 18:2) and  $\alpha$ -linolenic fatty acid (n-3, 18:3) to an animal as a means of improving a learning faculty, memory, recognition ability, or visual identification ability, wherein the weight ratio of linoleic fatty acid to  $\alpha$ -linolenic fatty acid in the composition is 0.05-7.5, and wherein the administration occurs over a period of time sufficient to observe improvement in learning faculty, memory, recognition ability or visual identification ability.

#### B. The Cited References

SPINNER relates to a triglyceride cooking/salad oil used to achieve health benefits in humans and other animals. In some embodiments, the composition of Spinner comprises linoleic and  $\alpha$ -linolenic in a 2:1 weight ratio.

### C. Analysis

According to the M.P.E.P. § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".

The claimed methods are directed to improving learning faculty, memory, recognition ability, or visual identification ability by administering a composition comprised of linoleic fatty acid and  $\alpha$ -linolenic fatty acid in a weight ratio of 0.05-7.5.

Spinner describes a composition having linoleic acid and  $\alpha$ -linolenic acid in a 2:1 weight ratio. The composition of Spinner is described as offering health benefits (Col. 2, lines 20-27), and that the presence of  $\alpha$ -linolenic acid is beneficial in that "  $\alpha$ -linolenic acid has also been shown to promote growth and improve the development of visual acuity" (Col. 3, lines 4-6). It is this latter passage that the Examiner relies on, asserting that "a composition that can be used to improve visual acuity can in turn be used to improve learning and memory" (Office Action at page 7). Applicants submit that the passage in Spinner noting that  $\alpha$ -linolenic acid improves visual acuity does not provide a teaching of the claimed methods, in particular the claimed methods related to improving visual identification, learning faculty, and memory, for the following reason.

Visual acuity is defined, as noted by the Examiner, in Rehkamper at page 1574 as the minimum size of an object that can be seen by a subject. As the Examiner additionally notes, "(o)ne must learn what the object is in order to be able to identify it" (Office Action at page 7). Thus, an object which can be seen by a subject having a particular visual acuity may or may not be identifiable. For this reason, visual acuity is not synonymous with visual identification.

Nor is visual acuity related to improved learning and memory, as the Examiner asserts. Visual acuity is not a cognitive function, but a physiological ability. The physiological ability of visual acuity has little, if any, bearing on the cognitive functions of learning and memory, as evidenced, for example, by a person with no visual acuity (e.g., a blind person) being capable of learning and memory when information is presented in a non-visual format. Thus, the sentence in Skinner teaching that "  $\alpha$ -linolenic acid has also been shown to promote growth and improve the development of

visual acuity" is not an express or an inherent teaching of the claimed methods related to improving memory or learning faculty.

Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 102(b).

IV. Rejection under 35 U.S.C. §103

Claims 4-12 were rejected under 35 U.S.C. §103 as allegedly obvious over U.S. Patent No. 6,150,411 issued to Stordy (hereinafter "Stordy") in view of Spinner.

This rejection is respectfully traversed.

A. The Present Claims.

A summary of the presently claimed methods is given above.

B. The Cited References

STORDY describes a method of treating dyslexia by administering docosahexaenoic acid (DHA), alone or in combination with other fatty acids, at a daily dose of 1 mg to 100 g. SPINNER is described above.

C. Analysis

According to the M.P.E.P. § 2143, "to establish a prima facie case of obviousness, three basic criteria must be met." The third criterion is that "the prior art references (or references when combined) must teach or suggest all the claim limitations."

The claimed methods are to improving learning faculty, memory, recognition ability, or visual identification ability by administering a composition comprised of linoleic fatty acid and  $\alpha$ -linolenic fatty acid in a weight ratio of 0.05-7.5.

Stordy describes a method of treating dyslexia by administering DHA, alone or in combination with other fatty acids. The disclosure of Stordy is silent with respect to a method for improving learning faculty, memory, recognition ability, or visual identification. Thus, Stordy does not teach all the claim limitations.

The secondary reference of Spinner, as discussed above, also does not show or suggest methods for improving learning faculty, memory, recognition ability, or visual identification. The minimal teaching in Spinner of  $\alpha$ -linolenic acid having been shown to "promote growth and improve the development of visual acuity" is not synonymous with any of the claimed methods for the reasons provided above.

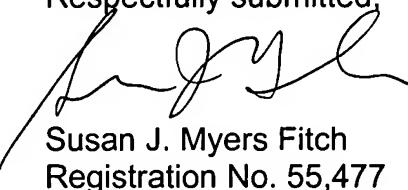
Because the references, alone or in combination, fail to teach or suggest all the claim limitations, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103.

V. Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4300.

Respectfully submitted,



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